SUBMISSION TRACK: Social Science and Policy Research

PREFERRED PRESENTATION: Research-Based Oral Presentation

A RIGHT DENIED BY DESIGN: HOW THE NDPS ACT 1985 AND THE GUJARAT PROHIBITION ACT 1949 STRUCTURALLY VIOLATE THE ARTICLE 21 RIGHT TO HEALTH OF PEOPLE WHO INJECT DRUGS IN GUJARAT

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Background:

The Supreme Court of India has consistently held — from Parmanand Katara v Union of India (1989) to Navtej Singh Johar v Union of India (2018) — that Article 21 encompasses an enforceable right to health. People who inject drugs (PWID) in Gujarat face a dual-legislative burden: the NDPS Act 1985 criminalises possession of controlled substances while the Gujarat Prohibition Act 1949 imposes additional state-level penalties. Together, these instruments actively deter PWID from accessing HCV testing and treatment — a direct, legally cognisable barrier to the Article 21 right.

Approach:

A doctrinal legal analysis examined the NDPS Act 1985, Gujarat Prohibition Act 1949 and their enforcement rules alongside constitutional right to health jurisprudence. ICESCR General Comment 14 and WHO harm reduction guidance were applied as interpretive aids. Legislative provisions and judicial interpretations were mapped against specific barriers they create for PWID seeking HCV care.

Analysis:

Three constitutional violation mechanisms are identified. First, Section 27 of the NDPS Act criminalises consumption, creating a chilling effect on health-seeking incompatible with Article 21 positive obligations. Second, the Gujarat Prohibition Act's preventive detention and warrantless search provisions render harm reduction service engagement a de facto legal risk. Third, neither instrument contains a public health exception or safe harbour for PWID engaging with HCV treatment — a gap in direct contrast to judicial recognition of healthcare access as non-derogable.

Conclusion and Next Steps:

These instruments together produce a legally constructed barrier to HCV care inconsistent with India's constitutional and international obligations. This analysis provides a rights-based framework for litigation, policy reform and legislative amendment. Conference attendees will gain tools for challenging punitive drug legislation as a barrier to HCV elimination. Next steps include developing a public interest litigation brief and submitting recommendations to the Gujarat Law Commission and Ministry of Health and Family Welfare.

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